

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THEO OVERSTREET, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ABBOTT CARDIOVASCULAR SYS
INC., a Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 5:23–CV–01321 SSS (SPX)

[Removed from Riverside County Superior
Court, Case No. CVRI2302388]

**ORDER ENTERING STIPULATED
PROTECTIVE ORDER**

Complaint Filed: May 8, 2023

Removal Date: July 7, 2023

Trial Date: Not Set

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles. The
10 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.

14 B. GOOD CAUSE STATEMENT

15 The discovery obtained in this action may involve disclosure of non-public,
16 confidential, proprietary, commercially sensitive, and/or trade secret information.
17 Disclosure of this information to persons who are not entitled to it carries the danger of
18 compromising the competitive business interests of Defendant Abbott Cardiovascular
19 Systems Inc. (“Defendant”) and also risks invasion of the legitimate personal privacy
20 interests of Plaintiff Theo Overstreet (“Plaintiff”) and Non-Parties.

21 Defendant anticipates that it may need to produce material that contains
22 proprietary information concerning its business practices and procedures for the
23 operation of its facilities that may be of value to a competitor or may cause harm to its
24 legitimate business interests in the marketplace. Defendant further anticipates that it
25 may need to produce non-public information concerning Plaintiff or Non-Parties that is
26 personal in nature and/or protected by the right of privacy.

27 The issuance of this Protective Order will allow for efficiency in the discovery
28 process and provide a mechanism by which discovery of relevant confidential

information may be obtained in a manner that protects against risk of disclosure of such information to persons not entitled to such information. Further, the issuance of this Protective Order, will protect the Parties' interests by providing the Parties recourse in this Court in the event that a Party or Non-Party improperly handles non-public, confidential, proprietary, commercially sensitive, and/or trade secret information that the parties have had to exchange in the course of discovery propounded and depositions taken in this Action.

2. DEFINITIONS

2.1. Action: The instant action: *Theo Overstreet v. Abbott Cardiovascular Sys Inc.*, United States District Court, Central District of California Case No. 5:23-CV-01321 SSS (SPX).

2.2. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3. "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement. "CONFIDENTIAL" Information or Items include:

(a) Non-public information about Plaintiff or any other individuals, including personnel records, evaluations, wage statements and other compensation information, time records, medical information, contact information, or other personal and confidential information;

(b) Information that is a "trade secret" as that term is defined in 18 U.S.C. § 1839; and/or

(c) Information alleged in good faith by a Party to be subject to protection under the Federal Rules of Evidence and/or information that is confidential, of commercial value, and/or falls into one or more of the following categories:

(1) Defendant's policies and procedures for operating Defendant's facilities;

(2) Documents that reflect the implementation of Defendant's policies and procedures for operating Defendant's facilities;

(3) Information that is protected against disclosure by written confidentiality agreement between a third party and Plaintiff or Defendant;

(4) Business plans, models, marketing analyses, sales, and financial statements or other sensitive business documents; and

(5) Personal or private information about Non-Parties.

2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5. Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.6. Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7. Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8. House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9. Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10. Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

1 2.11. Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13. Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
9 their employees and subcontractors.

10 2.14. Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected
16 Material (as defined above), but also (1) any information copied or extracted from
17 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
18 Material; and (3) any testimony, conversations, or presentations by Parties or their
19 Counsel that might reveal Protected Material.

20 Any use of Protected Material at trial shall be governed by the orders of the trial
21 judge. This Order does not govern the use of Protected Material at trial.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
25 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
26 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
27 and (2) final judgment herein after the completion and exhaustion of all appeals,
28

rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that

1 contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins). To the extent
4 documents are produced in their native format, it shall be sufficient to append the
5 designation “Confidential” to the filename of such documents and / or to include an
6 associated placeholder document bearing the “Confidential” designation.

7 A Party or Non-Party that makes original documents available for inspection
8 need not designate them for protection until after the inspecting Party has indicated
9 which documents it would like copied and produced. During the inspection and before
10 the designation, all of the material made available for inspection shall be deemed
11 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
12 copied and produced, the Producing Party must determine which documents, or portions
13 thereof, qualify for protection under this Order. Then, before producing the specified
14 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
15 that contains Protected Material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 (b) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 “CONFIDENTIAL.” If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portion(s).

24 (c) where discovery material described in (a) or (b) above has previously
25 been produced, the Designating Party shall make such designation by written notice to
26 all Parties that the document(s) should be treated as “CONFIDENTIAL,” by identifying
27 the Disclosures or Discovery Material to be designated with particularity (i.e., by
28 production numbers where available). Upon notice of the designation, all parties (i)

1 shall make no further disclosure of the Protected Material, except as provided by this
2 Stipulated Protective Order; and (ii) if such Protected Material has already been
3 disclosed to any person or in any circumstance not authorized under this Stipulated
4 Protective Order, shall immediately inform the person or persons to whom unauthorized
5 disclosures were made of all the terms of this Stipulated Protective Order, and request
6 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
7 (attached as Exhibit A).

8 (d) for testimony given in depositions, hearing, or other proceeding, that
9 the Designating Party identify the Disclosure or Discovery Material on the record,
10 before the close of the proceeding. Any Party also may designate testimony that is
11 entitled to protection by notifying all Parties in writing within thirty (30) days of receipt
12 of the transcript, of the specific pages and lines of the transcript which should be treated
13 as “CONFIDENTIAL” thereafter. Each Party shall attach a copy of such written notice
14 or notices to the face of the transcript and each copy thereof in its possession, custody
15 or control. Unless otherwise indicated, all deposition transcripts shall be treated as
16 “CONFIDENTIAL” for a period of thirty (30) days after the receipt of the transcript.
17 This preliminary treatment, however, shall not limit a deponent’s right to review the
18 transcript of his or her deposition under Federal Rule of Civil Procedure 30(e)(1).

19 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive the
21 Designating Party’s right to secure protection under this Order for such material. Upon
22 timely correction of a designation, the Receiving Party must make reasonable efforts to
23 assure that the material is treated in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s Scheduling
27 Order.
28

1 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37-1 et seq.

3 6.3. If the Parties cannot resolve a challenge without court intervention, the
4 Challenging Party may file and serve a motion, or *ex parte* application, challenging the
5 designation. Each such motion, or application must be accompanied by a competent
6 declaration affirming that the movant has complied with the meet-and-confer
7 requirements imposed in the preceding paragraph. In the case of an *ex parte* application,
8 the declaration must affirm the exigent circumstances requiring *ex parte* determination
9 of the designation. In opposing an *ex parte* application, the Designating Party may
10 request the challenge be briefed pursuant to the schedule in the Local Rules.

11 The Designating Party shall have the burden of establishing the applicability of
12 its “Confidential” designation in response to any such motion or application challenging
13 a confidentiality designation. Frivolous challenges, and those made for an improper
14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
15 may expose the Challenging Party to sanctions. Unless the Designating Party has
16 waived or withdrawn the confidentiality designation, all parties shall continue to afford
17 the material in question the level of protection to which it is entitled under the Producing
18 Party’s designation until the Court rules on the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1. Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this Action
22 only for prosecuting, defending, or attempting to settle this Action. In particular and
23 without otherwise limiting the foregoing, contact information disclosed to Plaintiff that
24 is designated as “CONFIDENTIAL” shall not be used at any time for the purpose of
25 soliciting individuals to assert wage and hour claims against Defendant outside the
26 context of this Litigation. This Stipulation shall not be construed in any way as a
27 restriction on Plaintiff’s counsel’s practice within the meaning of California Rules of
28 Professional Conduct, Rule 5.6. Protected Material may be disclosed only to the

1 categories of persons and under the conditions described in this Order. When the Action
2 has been terminated, a Receiving Party must comply with the provisions of section 13
3 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
9 may disclose any information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
12 disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided the deponent agrees on the
27 record to keep the information confidential or unless otherwise agreed by the
28 Designating Party or ordered by the court. Pages of transcribed deposition testimony

1 or exhibits to depositions that reveal Protected Material may be separately bound by the
2 court reporter and may not be disclosed to anyone except as permitted under this
3 Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation that
9 compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification
12 shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the subpoena
15 or order is subject to this Protective Order. Such notification shall include a copy of this
16 Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with the
20 subpoena or court order shall not produce any information designated in this action as
21 “CONFIDENTIAL” before a determination by the court from which the subpoena or
22 order issued, unless the Party has obtained the Designating Party’s permission. The
23 Designating Party shall bear the burden and expense of seeking protection in that court
24 or other proceeding of its confidential material and nothing in these provisions should
25 be construed as authorizing or encouraging a Receiving Party in this Action to disobey
26 a lawful directive from another court.

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
 2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
 4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
 5 produced by Non-Parties in connection with this litigation is protected by the remedies
 6 and relief provided by this Order. Nothing in these provisions should be construed as
 7 prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
 9 produce a Non-Party's confidential information in its possession, and the Party is
 10 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
 11 information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
 13 that some or all of the information requested is subject to a confidentiality agreement
 14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
 16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
 19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
 21 14 days of receiving the notice and accompanying information, the Receiving Party may
 22 produce the Non-Party's confidential information responsive to the discovery request.
 23 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
 24 any information in its possession or control that is subject to the confidentiality
 25 agreement with the Non-Party before a determination by the court. Absent a court order
 26 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
 27 in this court of its Protected Material.
 28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3. Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the specific
6 Protected Material at issue. If a Party's request to file Protected Material under seal is
7 denied by the court for any reason other than failure to comply with Civil Local Rule
8 79-5, then the Receiving Party may file the information in the public record unless
9 otherwise instructed by the court.

10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within 60
12 days of a written request by the Designating Party, each Receiving Party must return all
13 Protected Material to the Producing Party or destroy such material. As used in this
14 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected
16 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
17 must submit a written certification to the Producing Party (and, if not the same person
18 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
19 category, where appropriate) all the Protected Material that was returned or destroyed
20 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
21 compilations, summaries or any other format reproducing or capturing any of the
22 Protected Material. Notwithstanding this provision, Counsel is entitled to retain an
23 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
24 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
25 work product, and consultant and expert work product, even if such materials contain
26 Protected Material. Any such archival copies that contain or constitute Protected
27 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
28

1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED: September 19, 2023

BURROWS LAW FIRM, APC

7
8 By: /s/ Christopher L. Burrows, Esq.

9 Christopher L. Burrows, Esq.

10 Attorneys for Plaintiff

THEO OVERSTREET

11 DATED: September 20, 2023

HUNTON ANDREWS KURTH LLP

12
13 By: /s/ Steven A. Morphy

14 Michele J. Beilke

15 Julia Y. Trankiem

16 Steven A. Morphy

17 Attorneys for Defendant

18 ABBOTT CARDIOVASCULAR

19 SYSTEMS INC.

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
21

22 DATED: September 27, 2023

23 

24
25 Hon. Sheri Pym

26 United States Magistrate Judge
27
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that
 I have read in its entirety and understand the Stipulated Protective Order that was issued
 by the United States District Court for the Central District of California in the case of
Theo Overstreet v. Abbott Cardiovascular Sys Inc., United States District Court, Central
 District of California Cas No. 5:23-cv-01321-SSS-SP. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in
 the nature of contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person or
 entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 Action. I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or
 any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____